

**From:** [Elizabeth Goldmann](#)  
**To:** [Goldmann, Elizabeth](#)  
**Subject:** Fw: Meeting re: US EPA consideration to assert Clean Water Act Jurisdiction over the Santa Cruz River  
**Date:** Wednesday, October 26, 2016 10:00:30 AM

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**Dear User**

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----- Forwarded by Elizabeth Goldmann/R9/USEPA/US on 10/26/2016 10:00 AM -----

Document Log Item			
Addressing			
From	To		
DavidW Smith/R9/USEPA/US	Joann Asami/R9/USEPA/US@EPA		
CC	BCC		
Ann Nutt/R9/USEPA/US@EPA Jessica Kao/R9/USEPA/US@EPA Kristin Gullatt/R9/USEPA/US@EPA Robert Moyer/R9/USEPA/US@EPA Brian Frazer/DC/USEPA/US@EPA			
Description		Form Used:	
Subject	Date/Time		
RE: Meeting re: US EPA consideration to assert Clean Water Act Jurisdiction over the Santa Cruz River	02/04/2009 03:32 PM		
# of Attachments	Total Bytes	NPM	Contributor
0	34,341		Elizabeth Goldmann
Processing			
Comments			

▼ Body

## Document Body

Thanks Joann. We did provide a reasonably clear explanation when we initiated consultation last month. Here's what we provided in writing when we initiated consultation:

Dear Tribal Leader:

The purpose of this message is to initiate consultation with the Gila River Indian Community on a potential EPA decision concerning the Santa Cruz River that would enhance the ability of EPA and tribes to use Clean Water Act tools to protect and restore waters on tribal land. As you may know, under the Clean Water Act, interstate waters are considered waters of the U.S. subject to Clean Water Act jurisdiction.

We are now considering applying this jurisdictional basis to situations where waters cross tribal boundaries. Specifically, EPA Headquarters Office of Water is considering asserting Clean Water Act jurisdiction over the entire Santa Cruz River from the Mexican border to the confluence with the Gila River based on the fact that the River crosses the U.S.-Mexico border and the boundaries of the Tohono O'odham, Ak Chin, and Gila River tribal lands.

We recently contacted your staff to discuss this issue and we look forward to discussing any questions, comments, or concerns you may have. We would appreciate hearing your tribe's comments and concerns about this potential decision as soon as possible next week as the decision on Santa Cruz may be made by the end of next week, before the change in Administration. We apologize for the late notice but Region 9 only recently learned that EPA Headquarters is considering making this decision next week.

### Background

The federal Clean Water Act established several programs to protect and restore the quality of the waters of the United States (WUS), including rivers, streams, wetlands, and coastal waters. EPA works with authorized tribes to implement these programs. These programs have proven effective in addressing water pollution problems and the adverse effects of dredging and fill activities in the Santa Cruz River watershed, but more work remains to be done. In order to ensure that these successful efforts can continue and improve, EPA is working to verify that Clean Water Act protections remain in effect throughout these watersheds.

EPA shares responsibilities for implementing Clean Water Act Section 404 with the Army Corps of Engineers (Corps). Jurisdictional determinations to verify that waters are subject to Section 404 requirements are generally required under EPA and Corps regulations. In light of recent Supreme Court decisions that may reduce the scope of Clean Water Act jurisdiction, EPA and the Corps have had to more carefully identify WUS that are subject to federal jurisdiction. A key issue in evaluating jurisdiction on some waters is whether and how they influence downstream navigable and/or interstate waters.

Earlier in 2008, the Corps' Los Angeles District determined that two segments of Santa Cruz River (from Tubac to Continental and from Roger Road to Pinal County line) and two segments of Los Angeles River are navigable waters. The Corps later suspended its decisions on Santa Cruz River. Several interested parties and elected officials raised concerns about these decisions. As EPA has the final say on whether waters are WUS under Clean Water Act, EPA decided to invoke our "special case" authority to make the final decisions on jurisdiction and navigability for these Rivers in an effort to address the concerns raised by interested parties and officials.

### Potential Decision

EPA intends to evaluate the entire length of each River and examine different legal bases for asserting jurisdiction and navigability. EPA's decisions will assist in subsequent evaluations of Clean Water Act jurisdiction on other water bodies within the Santa Cruz River and Los Angeles River watersheds.

In addition to evaluating navigability of Santa Cruz and Los Angeles Rivers, EPA is now considering

asserting jurisdiction over the entire Santa Cruz River from the border to Gila River based upon its flow across tribal and international boundaries (i.e., because the Santa Cruz River is an "interstate" water). This decision would have the effect of reinforcing the basis for asserting jurisdiction on the Santa Cruz River itself, and easing the future evaluation of jurisdiction of tributaries that flow into the Santa Cruz River. Our goal is to ensure that Clean Water Act tools continue to be available to protect waters throughout the Santa Cruz River watershed.

Please contact me at your earliest convenience with questions, comments, or concerns. Many thanks for your consideration.

/s/

(That's what we sent. (b)(5) - del berative

Let's see how it goes Tuesday).

David Smith  
Chief  
Wetlands Regulatory Office (WTR-8)  
EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415)-972-3464  
▼ Joann Asami/R9/USEPA/US

Joann Asami/R9/USEPA/US

02/04/2009 03:18 PM

To

DavidW Smith/R9/USEPA/US@EPA

cc

Ann Nutt/R9/USEPA/US@EPA, Jessica  
Kao/R9/USEPA/US@EPA, Kristin Gullatt/R9/USEPA/US@EPA,  
Robert Moyer/R9/USEPA/US@EPA

Subject

RE: Meeting re: US EPA consideration to assert Clean Water Act  
Jurisdiction over the Santa Cruz River

david

one last thing. (b)(5) Deliberative Attorney Client

thanks,  
jo ann

▼ DavidW Smith---02/04/2009 02:46:36 PM---Thanks for the message, Joann. I think we should go ahead with the call. Our folks have relationsh

DavidW Smith/R9/USEPA/US

From:

Joann Asami/R9/USEPA/US@EPA

To:

Cc: Ann Nutt/R9/USEPA/US@EPA, Jessica Kao/R9/USEPA/US@EPA, Kristin Gullatt/R9/USEPA/US@EPA, Robert Moyer/R9/USEPA/US@EPA

02/04/2009 02:46 PM

Date:

RE: Meeting re: US EPA consideration to assert Clean Water Act Jurisdiction over the Santa Cruz River

Subject:

---

Thanks for the message, Joann.

I think we should go ahead with the call. (b)(5) Deliberative Attorney Client

I've invited the HQ Branch Chief or his staff to participate in Tuesday's call. (b)(5) Deliberative Attorney Client

David Smith  
Chief  
Wetlands Regulatory Office (WTR-8)  
EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415)-972-3464

▼ Joann Asami/R9/USEPA/US

Joann Asami/R9/USEPA/US

02/04/2009 02:20 PM

To

DavidW Smith/R9/USEPA/US@EPA, Kristin Gullatt/R9/USEPA/US@EPA

cc

Jessica Kao/R9/USEPA/US@EPA, Ann Nutt/R9/USEPA/US@EPA, Robert Moyer/R9/USEPA/US@EPA

Subject

RE: Meeting re: US EPA consideration to assert Clean Water Act Jurisdiction over the Santa Cruz River

hi david

(b)(5) Deliberative Attorney Client

(b)(5) Deliberative Attorney Client

thanks,  
jo ann

▼ DavidW Smith---02/04/2009 11:01:01 AM---I think that will be fine. You can call us at (415) 947-3542 or, if you prefer, give us a number to

From: DavidW Smith/R9/USEPA/US

To: "Linus Everling" <Linus.Everling@gric.nsn.us>

Cc: "Pongrace, Don" <dpongace@AKINGUMP.COM>, "Shavitz, Ian" <Ishavitz@AKINGUMP.com>, Joann Asami/R9/USEPA/US@EPA, "Joseph Manuel" <Joseph.Manuel@gric.nsn.us>, Kristin Gullatt/R9/USEPA/US@EPA, "Margaret Cook" <Margaret.Cook@gric.nsn.us>, "Lewis, Rod" <rlewis@akingump.com>, "Heeley, Steven" <sheeley@AKINGUMP.com>, "Thomas Murphy" <Thomas.Murphy@gric.nsn.us>, "Ray-Hodge, Vanessa" <vrayhodge@AKINGUMP.com>

Date: 02/04/2009 11:01 AM

Subject: RE: Meeting re: US EPA consideration to assert Clean Water Act Jurisdiction over the Santa Cruz River

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I think that will be fine. You can call us at (415) 947-3542 or, if you prefer, give us a number to call. If there are specific questions, issues, or concerns you'd like to mention in advance, we'd be pleased to hear them so we can be better prepared. Either way, we'll look forward to a call Tuesday, February 10th.

Many thanks for setting this up.

Kristin and Joann, I've reserved Room 1103 for the call.

David Smith

Chief

Wetlands Regulatory Office (WTR-8)

EPA Region 9

75 Hawthorne Street

San Francisco, CA 94105

(415)-972-3464

▼ "Linus Everling" <Linus.Everling@gric.nsn.us>

"Linus Everling"  
<Linus.Everling@gric.nsn.us>

02/04/2009 10:20 AM

To  
DavidW Smith/R9/USEPA/US@EPA

cc  
"Pongrace, Don" <dpongace@AKINGUMP.COM>, "Shavitz, Ian" <Ishavitz@AKINGUMP.com>, Joann Asami/R9/USEPA/US@EPA, "Joseph Manuel" <Joseph.Manuel@gric.nsn.us>, Kristin Gullatt/R9/USEPA/US@EPA, "Margaret Cook" <Margaret.Cook@gric.nsn.us>, "Lewis, Rod" <rlewis@akingump.com>, "Heeley, Steven" <sheeley@AKINGUMP.com>, "Thomas Murphy" <Thomas.Murphy@gric.nsn.us>, "Ray-Hodge, Vanessa" <vrayhodge@AKINGUMP.com>

Subject

RE: Meeting re: US EPA consideration to assert Clean Water Act

Jurisdiction over the Santa Cruz River

Hi David,

Does 8:00 AM Pacific Standard Time sound on Tuesday sound?

Linus Everling, Deputy General Counsel  
Gila River Indian Community  
Law Office  
525 W. Gu u Ki  
P.O. Box 97  
Sacaton, Arizona 85247  
(520) 562-9763  
(520) 562-9769 (fax)  
(520) 891-0402 (cell)

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-----Original Message-----

From: Smith.DavidW@epamail.epa.gov [<mailto:Smith.DavidW@epamail.epa.gov>]

Sent: Wednesday, February 04, 2009 10:30 AM

To: Linus Everling

Cc: Pongrace, Don; Shavitz, Ian; Asami.Joann@epamail.epa.gov; Joseph

Manuel; Gullatt.Kristin@epamail.epa.gov; Margaret Cook; Lewis, Rod;

Heeley, Steven; Thomas Murphy; Ray-Hodge, Vanessa

Subject: RE: Meeting re: US EPA consideration to assert Clean Water Act Jurisdiction over the Santa Cruz River

Hi Linus

We'd be fine with this time. I should mention that Kristin and I have a standing meeting scheduled for 10 on Monday that at least I will need to attend. I can be a few minutes late to it, so I can commit to perhaps 45 minutes on Monday before I will need to leave for the other meeting. Based on our other consultation discussions with GRIC and other tribes, we may be able to cover most if not all the ground we need to cover within that timeframe. Alternatively, we could try for an earlier start time, say 9:00 AM. Please let me know your preferences. At this point we are particularly interested in hearing and discussing any concerns and impressions the tribe has with regard to the action we're considering. We'll look forward to our conversation. Thanks.

David Smith

Chief

Wetlands Regulatory Office (WTR-8)

EPA Region 9

75 Hawthorne Street

San Francisco, CA 94105

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"Linus Everling"  
<Linus.Everling@  
gric.nsn.us>

02/04/2009 09:13  
AM

DavidW Smith/R9/USEPA/US@EPA,  
Kristin Gullatt/R9/USEPA/US@EPA,  
Joann Asami/R9/USEPA/US@EPA

To

cc

"Pongrace, Don"  
<dpongace@AKINGUMP.COM>,  
"Shavitz, Ian"  
<Ishavitz@AKINGUMP.com>, "Joseph  
Manuel"  
<Joseph.Manuel@gric.nsn.us>,  
"Margaret Cook"  
<Margaret.Cook@gric.nsn.us>,  
"Lewis, Rod"  
<rlewis@akingump.com>, "Heeley,  
Steven" <sheelley@AKINGUMP.com>,  
"Thomas Murphy"  
<Thomas.Murphy@gric.nsn.us>,  
"Ray-Hodge, Vanessa"  
<vrayhodge@AKINGUMP.com>

Subject

RE: Meeting re: US EPA  
consideration to assert Clean  
Water Act Jurisdiction over the  
Santa Cruz River

Hi David,

Thank you for your prompt response. I would suggest 9:30 AM on Monday. For others on this e-mail, let me know if that is a good time for you.

Once we have general consensus, I will circulate an e-mail invite to everyone. Thanks.

Linus Everling, Deputy General Counsel  
Gila River Indian Community  
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525 W. Gu u Ki  
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Sacaton, Arizona 85247  
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-----Original Message-----

From: Smith.DavidW@epamail.epa.gov [<mailto:Smith.DavidW@epamail.epa.gov>]

Sent: Wednesday, February 04, 2009 9:56 AM  
To: Linus Everling; Gullatt.Kristin@epamail.epa.gov;  
Asami.Joann@epamail.epa.gov  
Cc: Pongrace, Don; Shavitz, Ian; Joseph Manuel; Margaret Cook; Lewis, Rod; Heeley, Steven; Thomas Murphy; Ray-Hodge, Vanessa  
Subject: Re: Meeting re: US EPA consideration to assert Clean Water Act Jurisdiction over the Santa Cruz River

Hi Linus- Thank you for your message. I look forward to our next discussion; however, two of my colleagues who I'd like to involve (our Tribal Office Manager and attorney) will be unavailable this Friday (in transit back from RTOC meetings, I believe). We'd like to set something up for next week if possible. Would it be possible for us to talk Monday (before 10), Tuesday (before 11), or anytime Wednesday or Thursday between 9-4). Hopefully, we can find an hour or so within those windows that would work. Please let us know. Many thanks.

David Smith  
Chief  
Wetlands Regulatory Office (WTR-8)  
EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415)-972-3464

"Linus Everling"  
<Linus.Everling@gric.nsn.us>

02/03/2009 04:22  
PM

DavidW Smith/R9/USEPA/US@EPA To  
cc

"Pongrace, Don"  
<dpongace@AKINGUMP.COM>, "Thomas  
Murphy"  
<Thomas.Murphy@gric.nsn.us>,  
"Ray-Hodge, Vanessa"  
<vrayhodge@AKINGUMP.com>, "Lewis,  
Rod" <rlewis@akingump.com>,  
"Joseph Manuel"  
<Joseph.Manuel@gric.nsn.us>,  
"Heeley, Steven"  
<sheeley@AKINGUMP.com>, "Shavitz,  
Ian" <Ishavitz@AKINGUMP.com>,  
"Margaret Cook"  
<Margaret.Cook@gric.nsn.us>

Subject  
Meeting re: US EPA consideration  
to assert Clean Water Act  
Jurisdiction over the Santa Cruz  
River

Hi David,

I am the contact person for the Gila River Indian Community regarding the subject of the EPA asserting jurisdiction over the Santa Cruz River. We appreciate your time in fulfilling the EPA's responsibility under Executive Order 13175 in consulting with us early in the process on policy decisions that have substantial direct effects on one or more Indian tribes or on the relationship between the Federal Government and Indian Tribes. We hope this is the first of fruitful meetings in discussing this matter of utmost importance to the Gila River Indian Community. I suggest we begin this process by conference call on Friday, February 6, 2009. We would prefer a conference call on Friday morning between the hours of 8:00 AM and 11:00 AM Pacific Standard Time. Please let me know at your earliest convenience what time on Friday morning would be best for you. Thanks you in advance for your consideration. Regards,

Linus Everling, Deputy General Counsel  
Gila River Indian Community  
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